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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/574,866	05/19/2000	James M. Rehg	200308344-1	1569

7590 02/02/2005

IP Administration, Legal Department, MS35
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EXAMINER	
VO, LILIAN	
ART UNIT	**PAPER NUMBER**
2127	

DATE MAILED: 02/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	**Application No.** 09/574,866	**Applicant(s)** REHG ET AL.	
	Examiner Lilian Vo	**Art Unit** 2127	

--Th MAILING DATE of this communication app ars on the cover sh t with th correspondenc address --

THE REPLY FILED 11/29/05 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: NONE.

   Claim(s) objected to: NONE.

   Claim(s) rejected: *1 - 54*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

MENG-AL T. AN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Lilian Vo
Examiner
Art Unit: 2127

Continuation of 5. does NOT place the application in condition for allowance because: The rejection was deemed proper. Applicant's arguments have been fully considered but they are not persuasive for the reasons set forth below.

Regarding applicant's remarks that Jevtic did not teach or suggest the limitation "during run-time, learning a cost of a set of static schedules" (page 13, 1st paragraph, lines 3 - 4), the examiner disagrees. Jevtic clearly teaches this limitation in col. 4, line 40 - col. 5, line 9, in which during execution of the simulation associates with different schedule algorithms, the cost of each schedule based on performance is learned and used for comparing to determine an optimal schedule (see also fig 3 and col. 6, lines 1 - 61).

With respect to applicant's remark that Jevtic fail to suggest "an assignment of tasks in the application program to processors" (page 13, 1st paragraph, lines 6 - 8), the examiner has cited Babaian to show this teaching (Babaian: page 1, paragraph 11 - 12, page 2, paragraph 24, page 8,paragraph 86). Babaian clearly discloses "... the schedule for the whole program execution is divided into a multitude of streams in compliance with the available number of processors..." In other words, instructions in a program (tasks) are being assigned to the processors for executing. Applicant argues that Babaian fail to suggest the limitation "tasks in the computer program" (page 13, 2nd paragraph, line 5). If applicant believes that the "tasks in the computer program" has a different meaning than the instructions in the program from the cited reference, then applicant needs to define/show that in the claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See In re Casey, 152 USPQ 235 (CCPA 1967) and In re Otto, 136 USPQ 458, 459 (CCPA 1963).

With respect to applicant's remarks that Dave fails to teach or suggest "predicting the cost of a schedule dependent on stored task execution costs" and "schedule is selected for further exploration dependent on the predicted schedule cost" (page 13, 3rd paragraph), the examiner disagrees. Dave discloses the step of predicting the cost of a schedule dependent on stored task execution costs in col. 12, lines 26 - 56 and figs. 6 - 10 in which "... the algorithm picks the allocation that at least meets the deadline in the best case... This generally leads to the least-expensive architecture since a larger finish time usually corresponds to a less expensive architecture..." Furthermore, "...the algorithm stores the start as well as the finish times of each task and edge based on its best-possible as well as the worst-possible allocation".

Dave also discloses the limitation in which the schedule is selected for further exploration dependent on the predicted schedule cost in col. 12, lines 26 - 56 and figs. 6 - 10. Dave discloses the performance estimation and the allocation evaluation with "...the algorithm picks the allocation that at least meets the deadline in the best case... This generally leads to the least-expensive architecture since a larger finish time usually corresponds to a less expensive architecture..."

In response to applicant's argument that there is no suggestion to combine the references (page 13 4th paragraph), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation for the rejection is found in the knowledge generally available to one of an ordinary skill in the art.